

IT 96-33
Tax Type: INCOME TAX
Issue: Federal Change (Individual)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Docket #
)	SS #
v.)	Track #
)	
TAXPAYERS)	Barbara S. Rowe
Taxpayer)	Administrative Law Judge

OFFICE DISPOSITION

SYNOPSIS:

THIS MATTER COMES FOR DISPOSITION FOLLOWING THE TIMELY PROTEST BY TAXPAYER (THE "TAXPAYER") OF THE NOTICE OF DEFICIENCY ISSUED BY THE ILLINOIS DEPARTMENT OF REVENUE (THE "DEPARTMENT") IN THE AMOUNT OF \$544.00. AT ISSUE IS WHETHER THE TAXPAYER IS LIABLE FOR AN ADDITIONAL ILLINOIS INCOME TAX OBLIGATION TO THE DEPARTMENT FOR THE 1991 TAX YEAR. THE TAXPAYER DID NOT REQUEST A HEARING. IN THE PROTEST, THE TAXPAYER ASSERTED THAT THE INCOME TAX EXAMINATION DONE BY THE INTERNAL REVENUE SERVICE WAS INCORRECT BUT THE TAXPAYER DID NOT APPEAL THE DECISION BECAUSE THE COST WOULD EXCEED THAT LIABILITY. IT IS RECOMMENDED THAT THE MATTER BE RESOLVED IN FAVOR OF THE DEPARTMENT.

FINDINGS OF FACT:

1. PURSUANT TO ITS GRANT OF AUTHORITY UNDER PROVISIONS OF STATUTE, 35 ILCS 5/904(C), THE DEPARTMENT ISSUED A NOTICE OF DEFICIENCY ON SEPTEMBER 28, 1995 AND SERVED SUCH NOTICE ON THE TAXPAYER. THE LIABILITY ESTABLISHED IS FOR ADDITIONAL INCOME TAX, PENALTIES AND INTEREST DUE IN THE AMOUNT OF \$544.00 FOR THE TAXABLE YEAR ENDING DECEMBER 31, 1991.

2. THE BASIS OF THE NOTICE OF DEFICIENCY WAS THAT THERE HAD BEEN A SETTLED AND COMPLETED FEDERAL CHANGE AFTER WHICH THE TAXPAYER IS REQUIRED TO FILE AN AMENDED ILLINOIS RETURN PURSUANT TO 35 ILCS 5/506(B).

3. ON OR ABOUT NOVEMBER 8, 1995, THE DEPARTMENT RECEIVED A TIMELY PROTEST TO THE NOTICE OF DEFICIENCY. THE TAXPAYER DID NOT REQUEST A HEARING.

4. IN THE PROTEST, THE TAXPAYER ASSERTED:

THE DEP OF REV'S ASSESSMENT WAS BASED ON INCOME TAX EXAMINATION CHANGES ISSUED BY THE INTERNAL REVENUE SERVICE. HOWEVER, WE DID NOT AGREE TO SAID IRS FINDING WHICH RESULTED IN THE DEFICIENCY IN THE AMOUNT OF \$214.00. WE DID NOT APPEAL THE IRS'S ASSESSMENT BECAUSE THE LOSS TO BE INCURRED IN THE APPEAL WOULD EXCEED THE DEFICIENCY CLAIMED BY THE IRS. THE IRS'S FINDING WAS BASED ON TWO ISSUES: 1) W-2 WAGES SHOWN IN IRS RECORD 2) DISALLOWANCE OF SCHEDULE C EXPENSES FOR AUTOMOBILE AND COMMISSION/FEE: W-2 WAGES IN THE AMOUNT OF \$3,158 WAS FROM U.S.D.A. FOR WHICH I NEVER WORKED. HOWEVER, THERE WAS A WITHHOLDING TAX FOR THE FEDERAL AND STATE INCOME TAX FOR WHICH I WAS ALSO GIVEN A CREDIT OF \$493 BY THE IRS. IL DEP REV DID NOT GIVE ME A CREDIT. FOR SCHEDULE C EXPENSES, I SENT OUT ALL SUBSTANTIATION TO IRS BUT IRS MISPLACED THEM AND DID NOT CONSIDER THESE. I HAVE ALL SUBSTANTIATION FOR THOSE SCHEDULE C EXPENSES DISALLOWED BY THE IRS.

5. ON JANUARY 5, 1996, THE DEPARTMENT CONTACTED THE TAXPAYER AND EXPLAINED THAT THE ASSESSMENT IS DUE AND WILL REMAIN DUE UNLESS THE TAXPAYER COULD PROVIDE PROOF THAT THE INTERNAL REVENUE SERVICE HAD REVERSED ITS DECISION. SUCH PROOF WAS NOT FORTHCOMING.

6. THE TAXPAYER DID NOT SUBSTANTIATE THE CLAIM OF ADDITIONAL WITHHOLDING AT THE STATE LEVEL FOR THE U.S.D.A. EMPLOYMENT.

CONCLUSIONS OF LAW:

THIS CASE CONCERNS WHETHER THE TAXPAYER IS OBLIGATED TO THE STATE OF ILLINOIS FOR ADDITIONAL INCOME TAX FOR THE TAXABLE YEAR ENDING DECEMBER 31, 1991 IN THE AMOUNT OF \$362.00 PLUS PENALTY AND INTEREST. THE TAXPAYER WAS AUDITED AT THE FEDERAL LEVEL AND ASSESSED ADDITIONAL FEDERAL TAX ON A NET CHANGE OF INCOME IN THE AMOUNT OF \$12,072.00 FOR THE 1991 INCOME TAX YEAR.

THE STARTING POINT FOR ILLINOIS INCOME TAX LIABILITY IS THE ADJUSTED GROSS INCOME SHOWN ON THE FEDERAL RETURN. THE ILLINOIS SUPREME COURT HAS STATED THAT "NET INCOME IS COMPUTED FOR INDIVIDUALS BY TAKING THE ADJUSTED GROSS INCOME FROM THE FEDERAL INCOME TAX RETURN, WITH CERTAIN ADJUSTMENTS..." THORPE V. MAHIN, 43 Ill.2d 36, 38 (1969).

IN DETERMINING WHEN THE TAXPAYER IS LIABLE FOR ADDITIONAL INCOME TAX PURSUANT TO A FEDERAL CHANGE, THE ILLINOIS INCOME TAX ACT STATES:

IN THE EVENT THE TAXABLE INCOME,...REPORTED IN A FEDERAL INCOME TAX RETURN OF ANY PERSON FOR ANY YEAR IS ALTERED BY AMENDMENT OF SUCH RETURN OR AS A RESULT OF ANY OTHER RECOMPUTATION...AND SUCH ALTERATION REFLECTS A CHANGE OR SETTLEMENT WITH RESPECT TO ANY ITEM OR ITEMS, AFFECTING THE COMPUTATION OF SUCH PERSON'S BASE INCOME FOR ANY YEAR UNDER THIS ACT,...SUCH PERSON SHALL NOTIFY THE DEPARTMENT OF SUCH ALTERATION. SUCH NOTIFICATION SHALL BE IN THE FORM OF AN AMENDED RETURN OR SUCH OTHER FORM AS THE DEPARTMENT MAY BY REGULATIONS PRESCRIBE,... AND SHALL BE FILED NOT LATER THAN 120 DAYS AFTER SUCH ALTERATION HAS BEEN AGREED TO OR FINALLY DETERMINED FOR FEDERAL INCOME TAX PURPOSES... (35 ILCS 506(B))

IN THE PRESENT CASE, THE FEDERAL ADJUSTED GROSS INCOME OF THE TAXPAYER IS THE AMOUNT REPORTED TO THE DEPARTMENT PURSUANT TO THE

FEDERAL AUDIT. THE TAXPAYER CHOSE NOT TO APPEAL THE ADJUSTMENT AT THE FEDERAL LEVEL. IT THEREFORE BECAME A FINAL DETERMINATION AS REQUIRED BY 35 ILCS 506(B).

THE DEPARTMENT, HAVING BEEN NOTIFIED BY THE FEDERAL GOVERNMENT OF THE FINAL CHANGE, ISSUED A NOTICE OF DEFICIENCY. THE NOTICE OF DEFICIENCY IS PRIMA FACIE CORRECT (35 ILCS 5/904) AND THE BURDEN IS ON THE TAXPAYER TO SHOW THAT HE IS NOT RESPONSIBLE FOR THE TAX. ORDINARILY, A TAXING AUTHORITY HAS THE BURDEN OF PROOF REGARDING A TAXPAYER'S LIABILITY TO THE GOVERNMENT BUT THE ILLINOIS LEGISLATURE, IN ORDER TO AID THE DEPARTMENT IN MEETING ITS BURDEN OF PROOF IN THIS RESPECT, HAS PROVIDED THAT THE FINDINGS OF THE DEPARTMENT CONCERNING THE AMOUNT OF TAX DUE ARE CORRECT AND THE BURDEN IS ON THE TAXPAYER TO DISPROVE THOSE FINDINGS. BALLA V. DEPARTMENT OF REVENUE, 96 ILL.APP.3D 293 (1981).

THE TAXPAYER PRODUCED NO EVIDENCE TO SHOW THAT THE FEDERAL DECISION WAS CHANGED OR AMENDED. THE TAXPAYER DID NOT PRODUCE EVIDENCE TO SUPPORT THE CLAIM THAT ADDITIONAL TAXES WERE WITHHELD AT THE STATE LEVEL. THE TAXPAYER THEREFORE, IS LIABLE TO THE STATE OF ILLINOIS FOR FURTHER TAXES ON THE ADDITIONAL INCOME SHOWN ON THE FINALIZED FEDERAL FORM.

IT IS RECOMMENDED THAT THE DIRECTOR UPHOLD THE NOTICE OF DEFICIENCY IN ITS ENTIRETY.

RESPECTFULLY SUBMITTED,

BARBARA S. ROWE
ADMINISTRATIVE LAW JUDGE
MAY 3, 1996